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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/600,947	07/25/2000	BRUCE TOWE	A31178PCTA	4172

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EXAMINER

ALEXANDER, LYLE

ART UNIT	PAPER NUMBER
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1743

DATE MAILED: 11/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/600,947

Applicant(s)

TOWE, BRUCE

Examiner

Lyle A Alexander

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-8 and 10-11 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Guilbeau et al.

See the appropriate paragraph of paper 13.

With respect to the 8/27/03 amendments, Applicants have added the limitations that the system is continuously measuring analytes in stream where the reagent fluid is placed in a waste reservoir downstream from the sensor system.

Guilbeau et al. teaches in column 3 lines 40+ placing the sensor in the blood stream to provide continuous monitoring. Further, a method of in-vitro analysis is taught that inherently must move the reacted blood to a waste area downstream from the sensor and collected (e.g. the reacted blood must be moved away from the sensor so further analysis can take place and because blood is hazardous material it is collected for proper disposal).

Claims 12-16 and 18-19 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Burgess.

See the appropriate paragraph of paper 13.

With respect to the 8/27/03 amendments, Applicants have added the limitations that the system is directed to a test fluid continuously supplied and detected by an optical cell.

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Burgess teaches in column 2 lines 39+ continuously measuring of an analyte in a liquid or gas by an optical sensor which all have been properly read on the pending claims.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Guilbeau et al. alone or in view of Williams.

See the appropriate paragraph of paper 13.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Burgess.

See the appropriate paragraph of paper 13.

***Response to Arguments***

Applicant's arguments filed 8/27/03 have been fully considered but they are not persuasive.

Applicants state Guilbeau et al. fails to teach a micro-flow system where a reaction occurs between the reagent and target. Guilbeau et al. teach in column 8 lines 45+ use of glucose oxidase that reacts with glucose in the blood and the subsequent quantification of glucose. The glucose oxidase has been read on the claimed reagent and the glucose in the blood as the target. The system taught by Guilbeau et al. is on a small scale and has been read on the claimed micro-flow system. Further, Applicants argue Guilbeau et al. fails to teach removing the sample/reagent to a waste reservoir

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down stream from the sensor system. This limitation has been addressed by the new rejection above.

Applicants traverse the combination of Guilbeau et al. in view of Williams by stating the combination does not teach the claimed polymer. The Office disagrees maintaining Williams teaches in column 6 lines 41-47 cellulose is a suitable material of construction.

Applicants traverse the rejections over Burgess on the basis the instant amendments now define over the claims. In the absence of greater specificity, the Office maintains the new rejection above properly meets these new limitations.

Applicants similarly traverse the application of Burgess under 35 USC 103 on the basis the subject matter from which claim 17 depends is patentable and thus claim 17 is patentable as well. The Office maintains all of the rejections of record are proper.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A Alexander whose telephone number is 571-272-1254. The examiner can normally be reached on Monday, Wednesday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 703-308-4037. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.



Lyle A Alexander  
Primary Examiner  
Art Unit 1743

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